

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____)	
)	
BLUE HEN HOTEL, LLC,)	
)	CIVIL ACTION NO. 05-CV-00221 (KAJ)
Plaintiff,)	
)	JURY TRIAL DEMANDED
v.)	
)	
CHARLES P. ARENA,)	
)	
Defendant.)	
_____)	

**PLAINTIFF, BLUE HEN HOTEL, LLC'S,
MOTION TO COMPEL DEFENDANT'S RESPONSES TO DISCOVERY REQUESTS**

Pursuant to FRCP Rule 37, plaintiff, Blue Hen Hotel, LLC ("BHH") through its counsel, moves this Court to compel defendant Charles P. Arena to answer written discovery requests and to make himself available for deposition. In support of this motion, BHH states as follows:

1. On or about March 13, 2006, BHH, through its counsel, served Interrogatories and Requests for Production of Documents upon counsel for Defendant.
2. Pursuant to Rules 33(b)(3) & 34(b) respectively, the Interrogatories and Requests for Production were to be answered within thirty (30) days, or by April 12, 2006.
3. Defendant did make certain documents available to plaintiff that were responsive to the Requests for Production #7 - #9 as to documents relating to the construction project out of which the instant dispute arises. However, defendant did not produce documents responsive to any other Request for Production. Furthermore, defendant did not answer or object in writing to plaintiff's Requests for Production of Documents. A copy of the Requests for Production are attached hereto as Exhibit A.,

4. Defendant has failed to answer or object in writing to the plaintiff's Interrogatories. A copy of the Interrogatories are attached hereto as Exhibit B.

5. On August 8, 2006, counsel for BHH sent counsel a letter requesting responses to the Interrogatories and Requests for Production. This letter also contains a request that defendant Charles P. Arena be made available for deposition pursuant to Rule 30. See Letter dated August 8, 2006, attached as Exhibit C.

6. On or about August 16, 2006, counsel for BHH spoke with Defense counsel regarding discovery. At that time defendant took the position that further discovery should not proceed until the Court rules on defendant's pending Motion to (partially) Dismiss Pursuant to FRCP 12(b)(6), filed on September 2, 2005, (D.I. #5).

7. The status of discovery was addressed in the interim status report to the Court dated August 16, 2006, by counsel for BHH (D.I. #24).

8. On August 21, 2006, counsel for both parties and the Court addressed the above referenced discovery dispute during an interim status report conference call. Fact discovery closes on September 29, 2006.

9. On August 22, 2006 counsel for BHH spoke to counsel for Arena by telephone, again requesting that Mr. Arena be made available for deposition.

10. To date, BHH has not received responses to the Interrogatories and Requests for Production, other than as noted above. Nor has Mr. Arena been made available for deposition.

11. The requested information is relevant to the case at issue. Namely, plaintiff alleges that defendant violated the Delaware Prompt Payment Act, violated the Consumer Fraud Act and engaged in a series of Fraudulent Conveyances. These claims arise, in large part, from Arena's alleged personal receipt of funds paid by project owner Blue Hen to bankrupt general

contractor, C. Arena & Co., that were owed to unpaid subcontractors on the pertinent construction project.

12. The requested discovery in no way cause annoyance or unjust oppression to Defendant.

13. Plaintiff will be prejudiced in its ability to defend this case without full and complete answers to its written discovery requests and the opportunity to depose defendant.

14. Plaintiff is not in default in any discovery obligations owed to the delinquent defendant.

WHEREFORE, plaintiff, Blue Hen Hotel, LLC respectfully requests that this Court enter an Order compelling defendant Charles P. Arena to answer plaintiff's written discovery requests and to make himself available for deposition within the time to be allotted by the Court or suffer appropriate sanctions upon further application to this Court.

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Attorney for Plaintiff,
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Dated August 24, 2006

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

)	
)	
BLUE HEN HOTEL, LLC,)	
)	CIVIL ACTION NO. 05-CV-00221 (KAJ)
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CHARLES P. ARENA,)	
)	
Defendant.)	
)	

ORDER

Having considered plaintiff, Blue Hen Hotel, LLC's, Motion to Compel and the response,

IT IS HEREBY ORDERED on this ____ day of _____, 2006, that plaintiff, Blue Hen Hotel, LLC's Motion to Compel is **GRANTED**.

1. Defendant is hereby ordered to submit answers to Plaintiff's Interrogatories and Requests for Production within ____ days of the date of this Order or risk further sanctions by the Court.

2. Defendant is hereby ordered to make himself available for deposition at the Wilmington DE offices of counsel for plaintiff within ____ days of the date of this Order or risk further sanctions by the Court.

IT IS SO ORDERED.

JUDGE

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CERTIFICATE OF SERVICE

I, James S. Yoder, Esquire, do hereby certify that on this 24th day of August, 2006, two (2) copies of the foregoing **PLAINTIFF'S MOTION TO COMPEL DEFENDANT'S RESPONSES TO DISCOVERY REQUESTS** were delivered by U.S. mail to the following party:

Joanne Ceballos, Esquire
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